

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

TAMMY WAGNER-MASON,	:	Case Nos. 3:10-cv-33
	:	
Plaintiff,	:	Judge Timothy S. Black
	:	Magistrate Judge Michael R. Merz
vs.	:	
	:	
ITT EDUCATIONAL SERVICES, INC.,	:	
	:	
Defendant.	:	

**DECISION AND ENTRY: (1) ADOPTING THE REPORT AND
RECOMMENDATIONS OF THE UNITED STATES MAGISTRATE JUDGE
(Doc. 23); AND (2) GRANTING IN PART DENYING IN PART DEFENDANT'S
MOTION FOR PARTIAL JUDGMENT ON THE PLEADINGS (Doc. 11)**

This case is before the Court pursuant to the Order of General Reference in the United States District Court for the Southern District of Ohio Western Division to United States Magistrate Judge Michael R. Merz. Pursuant to such reference, the Magistrate Judge reviewed the pleadings filed with this Court and, on September 22, 2010, submitted a Report and Recommendations.¹ (Doc. 23). Neither party filed objections to the Report and Recommendations.

As required by 29 U.S.C. § 636(b) and Fed. R. Civ. P. 72(b), the Court has reviewed the comprehensive findings of the Magistrate Judge and considered *de novo* all of the filings in this matter. Upon consideration of the foregoing, the Court does determine that such Report and Recommendations should be and is hereby adopted.

¹ In addition to the Report and Recommendations, Magistrate Judge Merz also issued a dismissal order as to Plaintiff's first claim (federal civil rights violation by gender and age discrimination), because Plaintiff moved for dismissal pursuant to Fed. R. Civ. P. 41(a). A motion for voluntary dismissal is not dispositive and thus was properly decided by Magistrate Judge Merz.

Accordingly, the Report and Recommendations (Doc. 23) is **ADOPTED** in full:

1. Plaintiff's third claim for relief (wrongful termination) is **DISMISSED** with prejudice;
2. Plaintiff's fifth claim for relief (violation of Ohio whistleblower statute 4113.52) is **DISMISSED** without prejudice;
3. Plaintiff's sixth claim for relief (sexual harassment) survives and remains pending; and
4. Therefore, Defendant's motion for partial judgment on the pleadings (Doc. 11) is **GRANTED** in part and **DENIED** in part.

IT IS SO ORDERED.

Date: 10/15/10

Timothy S. Black
Timothy S. Black
United States District Judge